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In the Supreme Court of the United States

OCTOBER TERM, 1991

RICHMOND, FREDRICKSBURG & POTOMAC RAILROAD COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly concluded that petitioner knew or should have known more than 12 years before it commenced its quiet title action against the United States that the United States claimed a right under a 1938 land exchange agreement to restrict use of petitioner's 36-acre tract of land adjacent to the George Washington Memorial Parkway to railroad operations.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 945 F.2d 765. The order of the district court (Pet. App. 10a) and its oral statement of reasons (Pet. App. 11a-12a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 1991. A petition for rehearing was denied on October 9, 1991. Pet. App. 13a. On January 3, 1992, Chief Justice Rehnquist extended the time within which to file a petition for a writ of certiorari

to and including January 17, 1992 (Pet. App. 14a), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The George Washington Memorial Parkway was constructed pursuant to federal statutes enacted in 1928 and 1930 to enable the development of scenic highways.[1] Since 1953, it has been a part of the National Park System, administered by the National Park Service.[2] The Park Service acts under the auspices of the scenic highway acts and its general statutory mandate for managing the National Park System. One critical element of that mandate, established by Congress in 1916, is to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Act of Aug. 25, 1916, ch. 408, § 1, 39 Stat. 535 (codified as amended at 16 U.S.C. 1). The Park Service's efforts to preserve the views from the George Washington Memorial Parkway have included planting and landscaping within existing Parkway

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[1] See Act of May 23, 1928, ch. 719, § 1, 45 Stat. 721 (authorizing construction of the Mount Vernon Memorial Highway from Arlington Memorial Bridge to Mount Vernon); Act of May 29, 1930, ch. 354, 46 Stat. 482 (incorporating the Mount Vernon Memorial Highway into the larger George Washington Memorial Parkway).

[2] See Act of Aug. 8, 1953, ch. 384, § 2, 67 Stat. 496 (codified as amended at 16 U.S.C. 1c(a)).

boundaries and acquisition of scenic easements over adjoining lands.[3] Pet. App. 2a-3a.

In 1938, petitioner and the United States executed an Indenture through which they exchanged interests in 17 parcels of land located in the vicinity of the Mount Vernon Memorial Highway, which is part of the larger George Washington Memorial Parkway project.[4] The Indenture was designed to resolve "doubts * * * concerning the boundaries between land claimed to be owned by" petitioner and the United States and "controversies * * * as to their respective rights, titles, interests and estates in and to certain lands." 1938 Indenture, C.A. Joint App. 27-28. In exchanging properties, the government's purpose was to protect views from the Mount Vernon Memorial Highway; petitioner wished to clear the title to lands intended for the expansion of certain railroad facilities. Pet. App. 3a.

The property at issue in this case consists of most of a tract of land identified as "Area 3" in the 1938 Indenture. 1938 Indenture, C.A. Joint App. 49-51. The property presently underlies a section of petitioner's main rail line between Washington, D.C., and Richmond, Virginia, and part of a switching facility known as the Potomac Yard. Under the 1938 In-

[3] Pet. App. 3a; see *United States* v. *Belle View Apartments*, 217 F.2d 636, 638 (4th Cir. 1954) (describing landscaping efforts); *United States* v. *47 Acres of Land*, Civ. No. 3134-M (E.D. Va. Oct. 16, 1964) (final judgment of $744,500 in action to condemn scenic easement for benefit of the Parkway), *reprinted in* Gov't C.A. Br. Addendum.

[4] See note 1, *supra*. The exchange of land adjacent to the Potomac River was authorized by the Act of June 4, 1934, ch. 375, 48 Stat. 836.

denture, the United States quitclaimed Area 3 to petitioner subject to the condition that the property would be used solely for enumerated railroad purposes. That limitation was stated both as a restriction on the scope of the quitclaim and as an express covenant by petitioner. Thus, the United States quitclaimed its interest in Area 3 to petitioner "for the purposes and subject to the restrictions, covenants and conditions hereinafter set forth." C.A. Joint App. 49. After describing the metes and bounds of Area 3, the 1938 Indenture stated that it was "hereby quitclaimed" to petitioner

> to be used by said Richmond, Fredericksburg and Potomac Railroad Company, its successors and assigns *solely for the construction, maintenance and operation of its main line railroad tracks and ways and a freight yard in connection therewith.*

C.A. Joint App. 50 (emphasis added).

The 1938 Indenture restates the railroad-use restriction as a covenant. C.A. Joint App. 50-51. The document provides that "the burden of this covenant" runs with Area 3 and the benefit runs "with the adjacent lands owned" by the government. *Id.* at 50. Pursuant to the covenant, petitioner agreed that

> it will not use said area or tract of land * * * hereinabove quitclaimed to it under the designation of Area 3 *for any other purpose than the construction, maintenance and operation by it of its*

main line railroad tracks and ways and a freight yard in connection therewith.

Id. at 51 (emphasis added).

At the time of the Indenture, Area 3 was separated from the Parkway by an intervening strip of land. With the creation of Washington National Airport, the Parkway was relocated to the west, and now crosses land that was within the original boundaries of Area 3. Pet. App. 4a.[5] In 1975 and 1977, the Washington Metropolitan Area Transit Authority purchased a strip of Area 3 from petitioner for the construction of a Metrorail line serving National Airport and other stops in northern Virginia. The Metrorail corridor adjoins the relocated Parkway boundary. At present, only a narrow strip of Parkway land and the Metrorail right-of-way separate the traffic lanes of the Parkway from the 36-acre portion of Area 3 to which petitioner retains title. Pet. App. 4a.

2. Petitioner has an interest in enterprises that have proposed to develop two major projects near National Airport, one of which would involve the commercial development of Area 3. Pet. App. 4a. In an April 1990 letter to the General Services Admin-

[5] The statute authorizing construction of the airport reaffirmed Congress's interest in the preservation of the scenic value of the Parkway. See Act of June 29, 1940, ch. 444, 54 Stat. 686. The statute authorized the President to retrocede property within the airport to the Park Service for management as part of the Mount Vernon Memorial Highway. § 1(b), 54 Stat. 688. In May 1947, President Truman invoked that authority to transfer roughly 264 acres from the airport to the National Park Service. See Exec. Order No. 9851, 12 Fed. Reg. 3167 (1947).

istration (a potential lessee for office space on the site), the Park Service reasserted the railroad-use restriction in the 1938 Indenture. See C.A. Joint App. 83.

On August 10, 1990, petitioner filed a quiet title action in the United States District Court for the Eastern District of Virginia challenging the railroad-use restriction. Petitioner requested a declaration that the quitclaim restriction and covenant set forth in the 1938 Indenture "are extinguished and without further force and effect" and that petitioner therefore holds fee simple title to Area 3 (excepting portions purchased by other parties since 1938). Compl., Prayer for Relief, *reproduced in* C.A. Joint App. 17-18. In the alternative, petitioner sought a declaration that its commitment in the 1938 Indenture not to use Area 3 for purposes other than railroad operations would be satisfied so long as it continued to use Area 3 "in part for railroad purposes." Compl., Prayer for Relief, *reproduced in* C.A. Joint App. 18-19.

The United States moved to dismiss for lack of jurisdiction on the ground that petitioner's action is time-barred. The government contended that because petitioner knew or should have known since 1938 that the United States claimed a right to restrict the uses of Area 3 to railroad operations, petitioner's suit to eliminate or weaken that restriction is barred by the Quiet Title Act's 12-year statute of limitations, 28 U.S.C. 2409a(g).[6]

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[6] Section 2409a(g) provides: "Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon

The district court agreed and dismissed the action. The court found that the terms of the 1938 Indenture "clearly and unambiguously" informed petitioner of the Park Service's interest in restricting the uses of Area 3. Pet. App. 11a. Finding no ambiguity in petitioner's notice of the United States' claim, the court rejected petitioner's contention that it should be allowed to conduct discovery in an effort to establish that its action is not time-barred. *Id.* at 12a.

3. The court of appeals affirmed. Pet. App. 1a-9a. It rejected petitioner's argument that there is an issue of fact to be resolved as to the meaning of the use restriction. Instead, the court of appeals agreed with the district court that the 1938 Indenture's provisions concerning Area 3 are "clear and unambiguous" and gave petitioner notice of the restriction on the use of the tract. *Id.* at 8a.

The court of appeals also rejected petitioner's contention that the Park Service had recently made a " 'new claim' which is broader in scope than the claim asserted" in the 1938 Indenture. Pet. App. 8a. The court found that petitioner "knew what the nature of this restriction was in 1938, and that the National Park Service is now asserting that same restriction." *Id.* at 8a-9a. The court concluded that even assuming that petitioner had not known "the exact nature of the government's claim in 1938, it still could not escape the limitations bar, for all that is necessary for accrual is 'a reasonable awareness that the Gov-

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which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. 2409a(g).

ernment claims *some interest* adverse to the plaintiff's.'" *Id.* at 9a, quoting *Knapp* v. *United States*, 636 F.2d 279, 283 (10th Cir. 1980).[7]

ARGUMENT

1. Petitioner contends (Pet. 14-18) that the courts below erred in determining that the 1938 Indenture put it on notice that Area 3 is restricted to railroad uses, and that this quiet title action, brought 52 years later, is therefore barred by the applicable 12-year limitations period established in 28 U.S.C. 2409a(g). There is no merit in petitioner's contention.

This Court has repeatedly stressed that waivers of sovereign immunity must be construed narrowly. See *United States* v. *Nordic Village, Inc.*, 112 S. Ct. 1011, 1014 (1992) ("the Government's consent to be sued must be construed strictly in favor of the sovereign, and not enlarge[d] . . . beyond what the language requires") (citations and internal quotation marks omitted); *Irwin* v. *Veterans Administration*, 111 S. Ct. 453, 456 (1990) (filing deadline with respect to discrimination claims against the government "is a condition to its waiver of sovereign immunity and thus must be strictly construed"); *United States* v. *Dalm*, 494 U.S. 596, 608 (1990) (taxpayer refund suit barred by strict application of statute of limitations). Because the Quiet Title Act represents a waiver of

[7] The court also observed that application of the statute of limitations here is "hardly harsh," because "[i]t simply means that [petitioner] cannot get fee simple title to Area 3 for nothing." "Having knowingly covenanted *not* to develop this land," the court noted, petitioner "cannot avoid negotiation as a necessary condition of altering the land use restriction on Area 3." Pet. App. 9a.

the United States' sovereign immunity, it must be construed strictly. The courts "must be careful not to interpret it in a manner that would extend the waiver beyond that which Congress intended." *Block* v. *North Dakota*, 461 U.S. 273, 287 (1983) (discussing Quiet Title Act statute of limitations), quoting *United States* v. *Kubrick*, 444 U.S. 111, 117-118 (1979); *United States* v. *Mottaz*, 476 U.S. 834, 851 (1986).

In *Block*, this Court noted that Congress had inserted the 12-year limitations period on quiet title actions in response to Executive Branch recommendations that Congress act to protect "the national public interest" by limiting costly litigation over stale land claims. 461 U.S. at 282-285. *Block* therefore refused to allow the Quiet Title Act's " 'careful and thorough remedial scheme to be circumvented by artful pleading.' " *Id.* at 285 (quoting *Brown* v. *GSA*, 425 U.S. 820, 925 (1976)). Under the Act, if the plaintiff "knew or should have known of the claim of the United States" 12 years or more before filing suit, the action is time-barred. 28 U.S.C. 2409a(g).

The court of appeals held that petitioner was put on notice by the plain terms of the 1938 Indenture of the restrictions claimed by the United States with respect to the use of Area 3. Petitioner argues (Pet. 15) that a variety of state law property doctrines qualify the plain language of the 1938 Indenture and support a reasonable belief on petitioner's part that its obligations under the Indenture were "at a minimum, uncertain in duration and scope." Even if those state property doctrines applied in this case to alter the "clear and unambiguous" use restriction in the Indenture (Pet. App. 8a), it would not assist petitioner in evading the 12-year limitations period. If the dura-

tion and scope of the Indenture's restrictions were unclear under law that was "known to the parties to the 1938 Indenture" (Pet. 15), petitioner was on notice of that uncertainty in 1938, and can assert no justification for sleeping on its asserted rights until August 1990.[8]

In any event, the court of appeals properly held that under the plain terms of the 1938 Indenture, petitioner knew or should have known since 1938 that the government claimed that non-railroad uses are barred in Area 3. As the court of appeals explained, "[a]s long as the interest claimed is a 'cloud on title,' or a reasonable claim with a substantial basis, it constitutes a 'claim' for purposes of triggering the twelve-year statute of limitations." Pet. App. 7a. It is unimaginable that petitioner lacked notice in 1938 of the government's claim that non-railroad uses are not permitted in Area 3. Petitioner signed a document in 1938 promising that "it will not use * * * Area 3 for any other purpose than the construction, maintenance and operation by it of its main line railroad tracks and ways and a freight yard in connection therewith." 1938 Indenture, C.A. Joint App. 51. That written commitment exacted by the government

[8] Moreover, petitioner's contention that the use restriction is an ephemeral or partial one under the 1938 Indenture is unpersuasive. The federal interest in restricting the use of Area 3 is to protect the views from the Parkway and thereby preserve its scenic quality. Pet. App. 3a. It is unreasonable to assume, in the face of the unqualified terms of the 1938 Indenture, that the government intended to leave those aesthetic interests to the mercy of petitioner upon the expiration of some brief number of years or upon petitioner's partial devotion of Area 3 to railroad uses.

conclusively refutes petitioner's assertion (Pet. 5) that "[n]ot until 1990 did the United States assert that the 1938 Indenture restricted the use of Area 3."

In applying the 12-year limitations period of 28 U.S.C. 2409a(g), courts have consistently charged plaintiffs with knowledge of written agreements setting forth the United States' interests in land and the reasonable inferences from their terms.[9] The court of appeals' analysis in this case is consistent with those precedents. The standard for determining when a quiet title plaintiff "should have known" that the United States claims an interest in property adverse to the plaintiff is one that looks to the reasonableness of the plaintiff's claim of ignorance of the United

[9] See, *e.g.*, *Vincent Murphy Chevrolet Co.* v. *United States*, 766 F.2d 449, 450-452 (10th Cir. 1985) (use restrictions set forth in 1965 quitclaim deed provided adequate notice of the United States' adverse claim); *Humboldt County* v. *United States*, 684 F.2d 1276, 1280 (9th Cir. 1982) (road construction agreement under which the United States retained title to right-of-way provided actual notice of United States' adverse claim); *Hart* v. *United States*, 585 F.2d 1280, 1282-1285 (5th Cir. 1978) (deeds conveying land to the United States provided notice to sellers of United States' adverse claim), cert. denied, 442 U.S. 941 (1979); see also *Lee* v. *United States*, 809 F.2d 1406, 1410 (9th Cir. 1987) (final decision rejecting homestead application provided notice that United States claimed adverse interest in disputed land), cert. denied, 484 U.S. 1041 (1988); *California ex rel. State Land Comm'n* v. *Yuba Goldfields, Inc.*, 752 F.2d 393, 396 (9th Cir.) (California's awareness that property deeds were prepared and recorded in the name of the United States provided ample notice of United States' claim), cert. denied, 474 U.S. 1005 (1985); *Stubbs* v. *United States*, 620 F.2d 775, 781 (10th Cir. 1980) (recorded deed, together with requests for use permits by plaintiff's predecessor in interest, were sufficient to put plaintiff on notice of United States' claim).

States' adverse claim. See, *e.g.*, *North Dakota ex rel. Board of University & School Lands* v. *Block*, 789 F.2d 1308, 1312 (8th Cir. 1986) (on remand from *Block* v. *North Dakota*, *supra*); *D.C. Transit System, Inc.* v. *United States*, 717 F.2d 1438, 1441 (D.C. Cir. 1983). In view of the terms of the 1938 Indenture, a reasonable landowner could not have remained ignorant for 50 years of the claim made by the Park Service in this case.[10]

2. Petitioner errs in contending (Pet. 9-14) that the decision below conflicts with *Deakyne* v. *Department of the Army, Corps of Engineers*, 701 F.2d 271, 274 (3d Cir.), cert. denied, 464 U.S. 818 (1983); *Poverty Flats Land & Cattle Co.* v. *United States*, 706 F.2d 1078 (10th Cir. 1983); and *Shultz* v. *Department of the Army*, 886 F.2d 1157 (9th Cir. 1989).

In *Deakyne*, the plaintiff sought to establish that the United States had acquired an easement rather than a fee interest in property condemned in 1887. The district court held that the plaintiff's notice that the United States claimed an easement did not trigger the limitations period for a quiet title action contesting the United States' claim to a fee interest, and the court of appeals agreed. See 530 F. Supp. 1322, 1325-1326 (D.Del. 1982), aff'd in relevant part, 701 F.2d at 274. That case has no relevance here. In this case,

[10] In fact, petitioner itself was fully aware of that claim. See pp. 16-17, *infra*. Because this case involves a government claim that arises from the clear language of an unambiguous agreement, of which the private party was well aware, petitioner's fear (Pet. 8) that the court of appeals' holding will license the United States to reinterpret land agreements with impunity 12 years after their making is misplaced.

unlike in *Deakyne*, the United States claims today exactly the interest that was granted to it by the clear language of the 1938 Indenture.

In *Poverty Flats*, the plaintiff contended that the United States' claim in 1982 to an interest in "caliche" (calcium carbonate) was not clear from its reservation of rights to "[a]ll mineral deposits" under a land patent dating from 1970. 706 F.2d at 1079. In view of legal authorities raising a question as to whether caliche is considered a "mineral" for a variety of purposes, the Tenth Circuit found that there was a "material issue of fact * * * as to whether the plaintiff knew or should have known" that the United States claimed an interest in the caliche under its mineral rights reservation. *Id.* at 1080. In this case, however, petitioner does not deny that the Indenture provided adequate notice, at the time of its execution in 1938, that the United States claimed a right to restrict the uses of Area 3. Instead, petitioner claims to have held a reasonable belief that the United States understood its interest to be subject to termination or dilution with the passage of time. But even under petitioner's theory, any ambiguity about the duration or scope of the United States' claim is inherent in the 1938 Indenture itself, and petitioner was not entitled to wait until 1990 to challenge that claim.

Moreover, the absence of any conflict between this case and the law in the Tenth Circuit is made clear by *Vincent Murphy Chevrolet Co.* v. *United States*, 766 F.2d 449, 450-452 (10th Cir. 1985), in which the court of appeals rejected a claim that is strikingly similar to petitioner's. In *Vincent Murphy*, the plaintiffs sought a declaration that certain use restrictions in a quitclaim deed from the United States were invalid or

unenforceable due to changed circumstances. To avoid the 12-year statute of limitations, the plaintiffs framed their action as a challenge to a "new" claim by the United States that the use restrictions continued even though the conditions inspiring them (military operations on adjacent property) no longer pertained. The court of appeals held that the plaintiffs' awareness of the restrictions when the deed was executed was sufficient to trigger the 12-year limitations period for any subsequent challenge to those restrictions. 766 F.2d at 452. Like the plaintiffs in *Vincent Murphy*, petitioner is claiming surprise from a purported new claim that in fact is traceable to a document executed long ago.[11]

Finally, in *Shultz* v. *Department of the Army*, *supra*, the court held that the specific elements of notice on which the United States had based its statute-of-limitations defense—"[e]rection of a fence, gate, and generally unattended guard post" on a military installation—were insufficient, without more, to inform the public that the United States claimed exclusive rights over an adjacent road. 886 F.2d at 1158, 1160-1161. Petitioner contends (Pet. 10) that *Shultz* "implicitly" holds that a mere claim of "some interest" by the United States more than 12 years

[11] Petitioner attempts to distinguish *Vincent Murphy* on the theory that petitioner, unlike the plaintiffs in *Vincent Murphy*, contends that the interest claimed by the United States was, as a matter of law, not created by the instrument under which it took title. Pet. 14 n.7. If that is so, however, petitioner's cause of action accrued, for purposes of 28 U.S.C. 2409a(g), in 1938, rather than 1990, for the plain terms of the 1938 Indenture reveal that the United States claimed the right to bar all uses other than railroad uses in Area 3.

earlier is not sufficient to trigger the statute of limitations. It is clear enough, however, that *Shultz* did not consider a claim of interest by the United States that was unequivocally spelled out in a document—as is the United States' interest in this case.[12]

3. Petitioner also argues (Pet. 19-22) that it was denied discovery on issues surrounding its claim. That factbound contention, involving the district court's exercise of discretion in finding that additional discovery would not have been relevant (Pet. App. 11a-12a), does not warrant review by this Court. In any event, petitioner does not state what kind of discovery was needed to determine whether the 1938 Indenture provided notice of the United States' claim to restrict the uses of Area 3. As the court of appeals explained, "no genuine issue of material fact existed since the 1938 indenture gave [petitioner] actual notice of the government's unambiguously defined

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[12] Moreover, the statement in *Shultz* quoted by petitioner (Pet. 10) was made in the court of appeals' discussion of issues that might arise on remand, and therefore constitutes dictum. To the extent the court suggested that property interests that the United States appeared to abandon, only to reassert at a later date, could be considered new claims for statute-of-limitations purposes, 886 F.2d at 1161, the court's dictum is incorrect. In any event, the court's statement is irrelevant here. Petitioner's suggestion (Pet. 5) that the Park Service acquiesced in the construction of a Metrorail line and a lane of a state highway on narrow strips of land just inside the original boundaries of Area 3—uses by other governmental bodies that serve important public interests—does not establish that the United States abandoned the railroad restriction on *petitioner*'s use of the property.

interest in restricting the uses of Area 3." *Id.* at 7a-8a.

Petitioner's apparent interest in discovering facts concerning the "meaning of the terms of the 1938 indenture" (Pet. 22) is especially misguided in light of petitioner's clear awareness that the 1938 Indenture gives rise to the precise claim for Area 3 that the Park Service is now asserting. In a challenge to Virginia's 1975 property tax assessment for land including Area 3, petitioner argued to the Virginia courts that the restrictions imposed by the 1938 Indenture detracted significantly from the value of its property because "the only interest which [petitioner] has in the indentured property is its value for railroad operating purposes or limited industrial uses." *Richmond, Fredericksburg & Potomac R.R.* v. *State Corporation Comm'n*, 247 S.E.2d 408, 418 (Va. 1978).[13] At a minimum, petitioner's position in that tax litigation demonstrates that the petitioner was keenly aware of the nature of the United States' claim with respect to Area 3. Additional discovery

[13] Petitioner supported its claim with expert testimony that "within the eight areas of railroad property affected by the Indenture, the use of much of the property is restricted to construction, maintenance and operation of railroad tracks and ways by RF & P," 247 S.E.2d at 413, and testimony from the railroad's Comptroller that the company's property should be assessed at "a value of one dollar per square foot for those areas in which the RF & P has 'restricted ownership rights' under the 1938 Indenture," *id.* at 414. The state court rejected petitioner's claim for reductions in the appraised value based on the 1938 Indenture, but it based that conclusion solely on the impracticality of adjusting property taxes for such a limitation. *Id.* at 418-419.

could not possibly establish that petitioner was justifiably unaware until 1990 of an interpretation of the 1938 Indenture that petitioner itself urged to the Virginia courts in 1978.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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